

HIGHER EDUCATION (Title 9A)
COMMISSION ON HIGHER EDUCATION
Licensure Rules

Proposed Readoption with Amendments: N.J.A.C. 9A:1

Authorized By: Commission on Higher Education, Alfred C. Koeppe, Chair

Authority: N.J.S.A. 18A:68-3

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number PRN: 2002-342

Submit written comments by December 6, 2002 to:

Dr. Jeanne Oswald

Administrative Practice Officer

Commission on Higher Education

20 West State Street

P.O. Box 542

Trenton, New Jersey 08625-0542

The agency proposal follows:

Summary

Under State law, the Commission on Higher Education is responsible for licensing institutions of higher education to offer college credit-bearing coursework in New Jersey. The Commission's licensure rules (N.J.A.C. 9A:1) set forth the standards that any institution or other entity seeking to offer academic credit-bearing courses or programs must meet to qualify for a license. These rules expire on August 17, 2003, pursuant to N.J.S.A. 52:14B-5.1c. Executive Order No. 66 (1978), the State's sunset provision, requires periodic review of rules to determine continued need and desirable changes. Extensive consultation with the New Jersey Presidents' Council and the institutions resulted in suggested revisions to the existing licensure rules. Accordingly, the Commission proposes readoption of N.J.A.C. 9A:1 with amendments. Substantive amendments pertaining to out-of-State institutions are proposed; the other proposed amendments are clarificatory or technical in nature. The rules proposed for readoption with amendments are organized in eight subchapters.

Subchapter 1 contains definitions and presents general standards in such areas as organization and administration, finance, faculty, libraries, student services, physical facilities, and official publications.

All but one of the proposed amendments are in the definitions section (N.J.A.C. 9A:1-1.2). A proposed new definition for "degree completion program" clarifies that the licensure rules apply to such programs, not just to courses and full degree programs. The definition concerns offerings by a baccalaureate institution at a place other than its home campus and specifies that the school must offer at least 26 percent of the credits required for the baccalaureate. This proposed amendment accords with N.J.S.A. 18A:3-15.4, which prohibits a New Jersey institution from offering or advertising an academic degree from an out-of-State institution when 75 percent or more of the degree requirements are completed at the in-State school. The change also applies to New Jersey senior institutions that offer degree completion programs at a New Jersey community college.

Other proposed changes in definitions clarify that New Jersey institutions do not need approval from the Commission to establish a "branch campus" out of State and delete reference to the number of members of the Presidents' Council. Also proposed for amendment is the terminology regarding acceptable institutional accrediting bodies, which appears in three definitions. Current rule text lists two official recognizing agencies. The misidentified Federal entity would be corrected to cite the U.S. Secretary, not Department, of Education. The other entity, the Council for Higher Education Accreditation (CHEA), prefers not to be listed, because of limitations on the accrediting bodies that are eligible to be considered for CHEA recognition, and so is proposed for deletion. The revised terminology would be repeated at N.J.A.C. 9A:1-1.3(d) and (e).

Subchapter 2 outlines general requirements, such as the length of the regular academic year and a limit on how many credit hours may be granted for activities of certain types and durations. Also presented are standards, including credit minimums, for degree programs at the various academic levels, associate through doctoral. The standards for undergraduate degrees include general education requirements. N.J.A.C. 9A:1-2.9 presents criteria for assessing an institution's request either to change or exceed its programmatic mission. No amendments are proposed.

Subchapter 3 delineates programmatic and organizational standards and resource and petition requirements that a higher education institution must meet to use the term "university" in its name. No amendments are proposed.

Subchapter 4 contains standards beyond those in subchapter 1 that proprietary institutions must meet to award collegiate degrees. The standards address such matters as changes in ownership, duration of license, library requirements and faculty workloads, and the governing board. No amendments are proposed.

Subchapter 5 prescribes rules beyond those in subchapter 1 for out-of-State institutions seeking approval to offer credit-bearing collegiate coursework in New Jersey. The requirements cover both initial and renewal licenses, petition procedures and contents, and petition review processes. Several amendments are proposed. Current N.J.A.C. 9A:1-5.1(a) reiterates the general requirement (at N.J.A.C. 9A:1-1.3) that a license must be obtained from the Commission before offering college courses or programs in New Jersey. The proposed amendment adds language specifying that the requirement extends to degree completion programs as well. Proposed new N.J.A.C. 9A:1-5.1(b) requires that a licensure petition from an out-of-State school contain evidence of the institution's authorization to offer the proposed program in its home state. The proposed amendment at recodified N.J.A.C. 9A:1-5.1(c) is an explicit reference to the standards of quality in both subchapters 1 and 2, which all petitioning institutions must meet.

The proposed amendment at recodified N.J.A.C. 9A:1-5.1(e) modifies the permissible licensure and relicensure periods for out-of-State institutions offering coursework but not full programs. The current rules require such institutions to petition for relicensure on an annual basis, as well as to submit annual updates. Annual petitions are unnecessary, because the Commission can effectively monitor course offerings through the updates alone. Because any licensure petition is a significant undertaking, an unnecessary annual requirement is unduly burdensome. Somewhat longer licensure periods remove this burden.

Finally, other proposed amendments would eliminate the separate review process now in place for petitions from out-of-State schools that are invited by in-State parties to offer educational services to a specific, delimited constituency (N.J.A.C. 9A:1-5.3(a)). Under that process, in-State institutions may submit counterproposals, but the inviting party still may, and usually does, select the original, invited proposal. The current rule also waives the general requirement (at recodified N.J.A.C. 9A:1-5.1(c)) that proposed offerings by out-of-State institutions must serve a demonstrable need, the invitation itself being deemed to demonstrate need. Under the proposed amendment, the different, simpler process for uninvited petitions (currently at N.J.A.C. 9A:1-5.3(b)), which does not waive the required evidence of need, would apply to all out-of-State institutions seeking to offer educational services in New Jersey, whether invited or not.

Subchapter 6 addresses off-campus offerings by New Jersey colleges and universities. The rules require advance approval by the Commission for new branch campuses, providing general standards and specifying required information to be included in the formal request for approval. Advance approval for extension centers is not required. Also addressed are standards for off-campus offerings made in conjunction with noncollegiate organizations. No amendments are proposed.

Subchapter 7 covers distance learning. The rules delineate standards for New Jersey institutions, address the granting of degrees for collaborative distance learning programs and the counting of students enrolled in multiple institutions, and outline review/approval requirements. For out-of-State institutions

or entities, the rules apply only to those seeking to offer credit-bearing distance learning with a physical presence in this State. No amendments are proposed.

Subchapter 8 implements N.J.S.A. 18A:3-15.1 et seq., which concerns fraudulent academic degrees. The rules define duly authorized institutions in other states and foreign countries, prohibit a person's using a degree designation unless the degree was granted by a duly authorized institution, and require that honorary degrees be so identified. The terminology regarding institutional accrediting bodies, described above for subchapter 1, would also be revised in this subchapter. No other changes are proposed.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption establish criteria to ensure that any institution (public, private, or proprietary, whether located in the State or not) offering college-level coursework in New Jersey meets standards of quality. By attesting that the institution possesses the wherewithal to provide a collegiate education of quality, application of these standards protects the citizens of New Jersey; individuals attending a licensed college, university, or degree-granting proprietary institution in New Jersey; and employers. The proposed amendments clarify standards for degree completion programs generally, consistent with pertinent State law, and specifically as applied in the case of out-of-State institutions proposing such programs. Other proposed amendments that affect out-of-State schools simplify petition review processes, thereby providing more even-handed application of the licensure rules for both in- and out-of-State institutions, and extend licensure and relicensure periods, thereby removing requirements that create an undue burden for out-of-State institutions seeking relicensure.

Economic Impact

The rules proposed for readoption have no direct economic impact upon the State's higher education institutions. An indirect impact flows from the fact that to meet the requirements set forth therein, institutions must allocate resources (employees, materials, equipment, etc.) to ensure compliance with the standards. The cost of such compliance obviously varies both institution to institution, and within a particular institution depending on the area involved. Proposed amendments simplifying processes and removing redundant requirements in connection with licensure petitions from out-of-State institutions should redound to the benefit of both in- and out-of-State institutions.

Federal Standards Statement

The rules proposed for readoption with amendments are not subject to a Federal standards analysis under Executive Order No. 27 (1994) because the licensure function of the Commission on Higher Education is not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments will not result in the generation or loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments affect proprietary schools, which are considered to be small businesses as defined under N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. However, they affect only those proprietaries that desire to offer credit-bearing courses; three such schools currently exist.

As stated above, the rules require such schools to meet certain criteria to ensure the quality of the college-level education they offer. In order to meet these requirements, the schools must allocate

resources (employees, materials, equipment, etc.) to ensure compliance with the standards; the cost of such compliance obviously varies but may not always represent additional cost. For example, N.J.A.C. 9A:1-1.7(b)4 requires an annual financial audit by an independent certified public accountant. This would not be an additional expense because Federal regulations governing Title IV student aid programs also require such audits. The rules do not contain burdensome reporting requirements.

These proprietary schools are held to the same standards as colleges offering similar instruction. The standards cannot be lessened for small businesses of this nature without seriously diluting the quality of the college-level education offered by those institutions. Therefore, no differing standards based on business size are offered.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:1.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

9A:1-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

. . .

Accreditation means a status attained by an institution through voluntarily meeting standards set by a nongovernmental entity recognized by the U.S. [Department of Education or the Council for Higher Education Accreditation] Secretary of Education.

. . .

Branch campus means a physical facility located at a place other than the institution's principal campus offering one or more complete programs leading to a degree. A branch campus in New Jersey requires approval by the Commission.

. . .

Degree completion program means the final portion of a baccalaureate degree program consisting of at least 120 semester credit hours offered by a baccalaureate degree-granting institution. A degree completion program is offered at a physical facility located at a place other than the baccalaureate degree-granting institution's principal campus. In a degree completion program, the baccalaureate degree-granting institution shall offer course work totaling 26 percent or more of the credits required for the baccalaureate degree.

. . .

Out-of-State institution means an institution whose principal campus is located within the United States or its possessions but not within the State of New Jersey and whose accreditation status in New Jersey is based upon that enjoyed by the principal campus located outside the State, as well as an institution located outside of the U.S. or its possessions that is recognized by the appropriate body in the particular country if the institution's requirements for awarding degrees are generally equivalent to those accepted in the U.S. by an accrediting body recognized by the U.S. [Department of Education or the Council for Higher Education Accreditation] Secretary of Education.

. . .
Presidents Council means the New Jersey Presidents Council, a statutory body consisting of presidents of the State s [45] public and independent institutions of higher education that receive State aid and four other presidents representing the State s [10] degree-granting religious and proprietary institutions.

. . .
Seeking accreditation means that an institution has achieved candidacy status or the equivalent standing as evidenced by meeting standards set by a nongovernmental entity recognized by the U.S. [Department of Education or the Council for Higher Education Accreditation] Secretary of Education.

. . .
9A:1-1.3 Licensure

(a) An institution seeking to offer credit-bearing courses or degree programs in New Jersey shall first provide evidence of incorporation and petition the Commission for licensure. No institution shall offer or advertise the availability of its credit-bearing course(s) or program(s) before receiving formal approval of its petition. Licensure shall require the institution to meet all the standards set forth in [N.J.A.C. 9A:1] this chapter.

(b) - (c) (No change.)

(d) In the case of a New Jersey-licensed institution accredited as a discrete entity (that is, not as a branch campus of an institution in another state) by an institutional accrediting body recognized by the U.S. [Department of Education or the Council for Higher Education Accreditation] Secretary of Education, the Commission shall accept reaffirmation of accreditation as sufficient for continued licensure provided that:

1. - 4. (No change.)

(e) With respect to an unaccredited New Jersey institution, that is, one that is not accredited as a discrete entity by an institutional accrediting body recognized by the U.S. [Department of Education or the Council for Higher Education Accreditation] Secretary of Education, the Commission shall grant licensure for a specified period not to exceed three years in the first instance or more than five years in subsequent instances. Under such conditions, the institution, if it wished to continue to offer credit-bearing courses in New Jersey, would be required to petition the Commission for relicensure at least six to eight months before the expiration of the current license.

(f) - (i) (No change.)

SUBCHAPTER 5. OUT-OF-STATE INSTITUTIONS

9A:1-5.1 Licensure required

(a) Out-of-State institutions wishing to offer credit-bearing courses, degree completion programs, or complete degree programs in New Jersey shall petition the Commission for licensure.

(b) An out-of-State institution s petition to offer a degree completion program shall provide evidence that the degree-granting institution is authorized to offer the full degree program in its home state.

[(b)] (c) The Commission in its coordinating capacity shall review from a Statewide perspective all such licensure petitions from out-of-State institutions. The Commission shall license only those institutions whose proposed offerings, in the opinion of the Commission, meet State standards of quality (see N.J.A.C. 9A:1-1 and 2), are fiscally viable, serve a demonstrable need, and are in accordance with the Commission s long-range plan for higher education.

[(c)] (d) (No change in text.)

[(d)] (e) Out-of-State institutions that offer credit-bearing courses, but not a degree program, [shall be licensed for only one year] shall be licensed initially for a period of two years. Relicensure shall be for a period of three years. However, those that meet the following criteria may be [licensed] relicensed for a period of up to five years.

1. - 3. (No change.)

Recodify existing N.J.A.C. 9A:1-5.1(e) through (h) as (f) through (i). (No change in text.)

9A:1-5.3 Review processes

[(a)]The following procedures apply to petitions from out-of-State institutions invited by in-State parties to offer educational services to a specific and delimited constituency in New Jersey.

1. Upon receipt of the petition, Commission staff shall provide to all New Jersey institutions of higher education a summary of the petition s content and shall invite the institutions to submit their comments and to indicate whether or not they wish, and are prepared, to offer comparable services. In-State institutions that wish to offer comparable services may submit proposals to the Executive Director within 60 days after the notification regarding the out-of-State request.

2. Commission staff shall forward immediately to the party requesting instructional services, as well as to the out-of-State institution, proposals from in-State institutions received within this 60-day period.

3. Commission staff shall review all full proposals, usually with the assistance of a consultant who is mutually acceptable to the institutions and the Executive Director. A needs survey is not required when an educational institution is invited by an in-State party to provide credit-bearing educational offerings to a specified and delimited constituency. The invitation itself demonstrates that a need exists.

4. If the Executive Director determines, in consultation with a committee of the Presidents Council, that an in-State proposal is comparable or superior to the out-of-State proposal, the Executive Director shall strongly encourage the in-State party requesting instructional services to accept an in-State proposal.

5. The in-State party requesting instructional services shall inform the Executive Director as to its choice of institution and specify its reasons for the selection.

6. If the in-State party selects the out-of-State institution, Commission staff shall send the petition and all pertinent materials to the Presidents Council for review and recommendation to the Commission.

(b) The following procedures apply to petitions from out-of-State institutions seeking to offer educational services in New Jersey without invitation.]

(a) The following procedures apply to petitions from out-of-State institutions invited by in-State parties to offer educational services to a specific and delimited constituency in New Jersey and to petitions from out-of-State institutions seeking to offer educational services in New Jersey without invitation.

1. Upon receipt of the petition, Commission staff shall provide to all New Jersey institutions a summary of the petition s content and shall invite the institutions to submit their comments within 60 days after the notification regarding the out-of-State request.

2. - 3. (No change.)

9A:1-8.1 Protected degree designations for earned degrees

(a) No person shall use or append to his or her name any academic degree designation, letters, derivatives thereof, or other designations as evidence of having earned an academic degree unless a duly authorized institution of higher education as defined in Section 3 of P.L.1986, c.87 (N.J.S.A. 18A:3-15.3)

conferred the degree.

1. In states without a licensing requirement for institutions of higher education, a duly authorized institution of higher education is one that is regionally accredited or accredited by the appropriate accrediting body recognized by the U.S. [Department of Education or the Council for Higher Education Accreditation] Secretary of Education or one that is seeking such accreditation.

2. Regarding institutions located outside of the U.S. or its possessions, a duly authorized institution of higher education is one that is recognized by the appropriate body in the particular country provided that the institution s requirements for awarding degrees are generally equivalent to those accepted in the U.S. by an accrediting body recognized by the U.S.[Department of Education or the Council for Higher Education Accreditation] Secretary of Education.